

## **REMARKS**

Claim 1, 8, 11, 18, 19, 25, 27, 28, 30 and 32 are amended. Claims 1-33 are pending for consideration. In view of the foregoing amendments and the following remarks, Applicant respectfully requests that this application be allowed and forwarded on to issuance.

## **§112 Rejections**

Claims 18, 19, and 27 stand rejected under 35 U.S.C. §112 as failing to provide an antecedent basis for an element in the claims. All three claims have been amended to provide proper antecedent basis, thus obviating the Office's ground for this rejection.

## §101 Rejections

Claims 1-12, 25, 27-30, and 32-33 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter.

Although Applicant traverses the rejection, Applicant has amended the claims for the sole purpose of advancing prosecution. Applicant respectfully submits that such amendments obviate the §101 rejections.

First, the Office rejects claims 1-12 as being directed to a “form of energy”. (*Office Action of 05/19/06*, p. 3). Without assenting to the propriety of the rejection and without waiver of the original claim language, Applicant has amended base claim 1 to recite “A processor-readable medium having a tangible component”. Applicant thus submits that amended claim 1 defines statutory subject matter in accordance with 35 U.S.C. §101.

1       Next, the Office rejects claims 25, 27-30, and 32-33 as allegedly being  
2 directed to non-statutory subject matter. The Office states that these claims recite  
3 computers and servers comprising software modules “per se”. Thus, according to  
4 the Office, these claims are directed neither to “computer components nor  
5 statutory processes”. (*Office Action of 05/19/06*, p. 3). Applicant respectfully  
6 disagrees. Nevertheless, Applicant has amended base claims 25, 28, 30, and 32 to  
7 recite computers or servers “having a tangible component”. Applicant thus  
8 submits that these claims recite statutory subject matter—namely machines—  
9 under 35 U.S.C. §101. For further support, Applicant cites to the Office’s Final  
10 Computer Related Examination Patent Guidelines, which state that “[i]f a claim  
11 defines a useful *machine* or manufacture by identifying the physical structure of the  
12 machine or manufacture in terms of its *hardware or hardware and software*  
13 *combination*, it defines a *statutory product*.<sup>1</sup>” §IV.B.2.a. (emphasis added). Thus,  
14 Applicant respectfully submits that claims 25, 27-30, and 32-33—directed to  
15 computers or servers with modules—define statutory subject matter.

16       Finally, the Office further rejects claim 30 under 35 U.S.C. §101 for failing to  
17 “achieve a tangible result.” According to the Office, claim 30 “merely recites a  
18 database and a distribution module for distributing software, [while] no physical  
19 transformation occurs as [a] result of distributing.” *Id.* Again, Applicant respectfully  
20 disagrees. Instead, claim 30 recites a “distribution server having a tangible  
21 component” and comprising a “distribution module”. The Guidelines thus dictate  
22 that this claim is directed to a “statutory product”, as it “defines a useful *machine* or  
23 manufacture by identifying the physical structure of the machine or manufacture in  
24 terms of its *hardware or hardware and software combination*. §IV.B.2.a. (emphasis  
25 added). Applicant therefore requests that the rejection be withdrawn.

1            **§102 Rejections**

2            Claims 1-18 and 20-33 stand rejected under 35 U.S.C. §102(b) as being  
3 anticipated by U.S. Patent No. 6,199,204 to Donohue. Applicant respectfully  
4 traverses the rejections as discussed below.

5            **Claim 1** recites a processor-readable medium having a tangible  
6 component and comprising processor-executable instructions configured  
7 for (emphasis added):

- 8            • receiving a binary signature;
- 9            • receiving a security patch;
- 10            • *identifying a vulnerable binary file* on a computer  
11 based on the binary signature; and
- 12            • *updating the vulnerable binary file* on the computer  
13 with the security patch.

14            Donohue, meanwhile, describes an updater agent that is associated with a  
15 computer program and that accesses relevant network locations to download and  
16 install updates to the agent's associated program. The agent downloads and  
17 installs the updates if those updates satisfy predefined update criteria of the  
18 updater agent. (*Donohue*, abstract). The predefined criteria may include the time  
19 period between searches for updates and whether the computer user has selected to  
20 receive all updates or only certain ones. In a preferred embodiment, the updater  
21 agent searches the internet via a search engine to find the network location where  
22 an update list is kept. Donohue's updater agent then *compares available software*  
23 *updates with installed software on the computer to determine which updates are*  
24 *relevant*. The updater agent then compares these updates with the predefined  
25

1 criteria to determine whether or not to download the updates. *Id.* at column 4, line  
2 14 through column 5, line 10.

3 Applicant respectfully submits that Donohue does not disclose “identifying  
4 a vulnerable binary file”. In stating that Donohue does indeed show such an  
5 element, the Office cites to column 8, lines 45-60. The Office then claims that  
6 Donohue’s “retrieved file 160” discloses Applicant’s “vulnerable binary file”, and  
7 that the cited passage discloses “identifying a vulnerable binary file on a computer  
8 based on the binary signature”. For convenience, Applicant reproduces this  
9 passage below:

10  
11 The updater component uses the URL to access 220 the list 60 and  
12 downloads 230 a file 160 comprising the portion of the list 60 of  
13 available updates which relates to the particular product. The updater  
14 component then performs steps 240-280 as shown in FIG. 4. Each  
15 file 160 contains message digests (e.g. MD5) which are digitally  
16 signed. The retrieved file 160 is then analyzed 240 using a digital  
17 signature checking algorithm (such as the algorithm described in  
18 U.S. Pat. No. 5,231,668). This is important to verify that the file 160  
19 represents the correct software updates list for the particular  
20 software product, and that the file has not been tampered with since  
21 signing. Also, checking for the digital signature is a useful way of  
22 filtering the results of the search since these may include a plurality  
23 of Web page URLs other than the correct one (the search may find  
24 other pages which have a reference to the named product version,  
25 including pages not published by the software vendor). If an attempt  
to download and verify a file is not successful, then the updater  
component moves on to the next URL found in the search.

21  
22 Applicant respectfully submits that this passage does not teach the element  
23 for which the passage is cited. Here, the updater agent navigates to a software  
24 vendor’s website to find a list of relevant updates. The “file 160” that the Office  
25 refers to is the portion of the list of updates that relates to the updater agent’s

1 software. This portion of the updates list is not, however, a “*vulnerable* binary file  
2 on a computer”. (emphasis added). It is instead a list of updates. Applicant  
3 respectfully submits that this list has not been shown to be “vulnerable” in any  
4 way.

5 In fact, Applicant respectfully submits that the Donohue system is quite  
6 inapposite of the subject matter of Applicant’s claim. In Donohue, the agent  
7 searches for a “file 160” of updates, the updates to be performed on the agent’s  
8 associated program. These updates are *not* to be performed on the file 160 of  
9 updates for which the agent searched. Applicant’s claim, meanwhile, recites  
10 “*identifying a vulnerable binary file* on a computer based on the binary signature;  
11 and *updating the vulnerable binary file* on the computer with the security patch.”  
12 (emphasis added). In sum, Donohue’s system identifies updates that are available  
13 for a particular computer program while Applicant’s claim identifies the  
14 “vulnerable...file” itself.

15 For at least this reason, this claim is allowable.

16 Furthermore, Applicant respectfully submits that the rejection is improper  
17 for failing to show how Donohue discloses the “updating” element of Applicant’s  
18 claim.

19 Applicant submits that if the above logic of the Office is followed, then  
20 *Donohue’s file 160 must be “updat[ed]” in order to disclose Applicant’s claim.*  
21 In other words, If Donohue’s “file 160” is the “vulnerable binary file” as Office  
22 suggests, and which Applicant does not concede, then in order to disclose  
23 Applicant’s claim the updater agent would also have to update the file 160. This is  
24 true because Applicant’s claim recites “updating *the* vulnerable binary file”.  
25 Applicant submits, however, that the updater agent does not update the update list,

1 but rather updates the agent's associated program. Applicant also notes that the  
2 updater agent, located on a computer, would obviously not have the authority to  
3 update an update list located on a software vendor's website. Applicant finally  
4 notes that while the Office cites to a different portion of Donohue for this  
5 "updating" element, such additional citation does not solve the above infirmity, as  
6 Applicant's claim recites "updating *the* vulnerable binary file" and the Office cites  
7 Donohue's file 160 as *the* "vulnerable binary file".

8 Thus, for at least this additional reason, this claim is allowable.

9 **Claims 2-7** depend from claim 1 and are allowable as depending from an  
10 allowable base claim. These claims are also allowable for their own recited  
11 features which, in combination with those recited in claim 1, are neither disclosed  
12 nor suggested in the references of record, either singly or in combination with one  
13 another.

14 **Claim 8** recites a processor-readable medium having a tangible component  
15 and comprising processor-executable instructions configured for (emphasis  
16 added):

- 17 • *receiving a binary signature that identifies a security*  
18 *vulnerability in a binary file;*
- 19 • receiving a security patch configured to *fix the security*  
20 *vulnerability in the binary file;* and
- 21 • distributing the binary signature and the security patch to a  
22 plurality of servers.

23 In making out a rejection of this claim, the Office states that Donohue  
24 discloses all of the elements of Applicant's claim. In stating that Donohue  
25

1 discloses “receiving a binary signature that identifies a security vulnerability in a  
2 binary file” the Office chiefly relies on column 8, lines 45-50.

3 As discussed above in regards to claim 1, however, Applicant respectfully  
4 submits that this portion of Donohue does not serve to anticipate this element of  
5 Applicant’s claim. Applicant once again submits that Donohue’s file 160,  
6 comprising a list of updates, *does not disclose a binary file with “a security*  
7 *vulnerability”*. In fact, the Office fails to show how Donohue’s list of updates is  
8 at all vulnerable. Applicant respectfully submits that because this file 160 is not  
9 vulnerable at all, and thus the cited passage of Donohue cannot be shown to  
10 disclose “receiving a binary signature that identifies *a security vulnerability in a*  
11 *binary file*”, as recited in Applicant’s claim.

12 For at least this reason, Applicant respectfully submits that this claim is  
13 allowable.

14 Furthermore, Applicant respectfully submits that the cited portion of  
15 Donohue also fails to disclose “receiving a security patch configured to fix the  
16 security vulnerability in the binary file”. As discussed at length in regards to  
17 claim 1, if Donohue’s file 160 is cited to disclose *the “binary file”* of Applicant’s  
18 claim, then the security patch must be “configured to fix the security  
19 vulnerability” in Donohue’s file 160 (i.e. *the binary file*). Applicant submits,  
20 however, that Donohue has not been shown to fix any security vulnerability in the  
21 updates list, nor would the updater agent have the authority to do so.

22 For at least this additional reason, Applicant respectfully submits that this  
23 claim is allowable.

24 **Claims 9-10** depend from claim 8 and are allowable as depending from an  
25 allowable base claim. These claims are also allowable for their own recited

1 features which, in combination with those recited in claim 8, are neither disclosed  
2 nor suggested in the references of record, either singly or in combination with one  
3 another.

4       **Claim 11**, as amended, recites a processor-readable medium having a  
5 tangible component and comprising processor-executable instructions configured  
6 for (emphasis added):

- 7           • receiving a binary signature from a server;
- 8           • *searching for the binary signature in binary files located on*  
9 *a client computer*;
- 10          • sending a request from the client computer to the server for a  
11 security patch if a binary file is found that includes the binary  
signature;
- 12          • receiving the security patch from the server; and
- 13          • *updating the binary file on the client computer* with the  
14 security patch.

15       In making out a rejection of this claim, the Office states that Donohue  
16 anticipates and uses reasoning similar to that discussed above in regards to claim  
17 1. Thus, for at least the reasons discussed above in regards to claim 1, Applicant  
18 respectfully submits that Donohue does not anticipate this claim. Namely,  
19 Donohue does not disclose “searching for the binary signature in binary files  
20 located on a client computer”. Instead, Donohue has *at most* been shown to  
21 disclose an updater agent located on a computer and that retrieves a list of updates  
22 from various software vendor websites. Furthermore, Donohue does not disclose  
23 “updating the binary file on the client computer”, as the Donohue updater agent  
24 does not disclose updating the update list, as discussed above.  
25

1 For at least these reasons, Applicant respectfully submits that this claim is  
2 allowable.

3 **Claim 12** depends from claim 1 and is allowable as depending from an  
4 allowable base claim. This claim is also allowable for its own recited features  
5 which, in combination with those recited in claim 11, are neither disclosed nor  
6 suggested in the references of record, either singly or in combination with one  
7 another.

8 **Claim 13** recites a method comprising (emphasis added):

- 9 • receiving a binary signature;
- 10 • *searching for a vulnerable file* based on the binary signature;
- 11 • if a vulnerable file is found, requesting a security patch; and
- 12 *fixing the vulnerable file with the security patch.*

13 In making out a rejection of this claim, the Office states that Donohue  
14 anticipates and uses reasoning similar to that discussed above in regards to claim  
15 1. Thus, for at least the reasons discussed above in regards to claim 1, Applicant  
16 respectfully submits that Donohue does not anticipate this claim. Namely,  
17 Donohue does not disclose “searching for a vulnerable file”. Instead, Donohue at  
18 most has been shown to search for a list of updates. Furthermore, Donohue has  
19 also not been shown to disclose “fixing the vulnerable file”, as the list of updates  
20 has not been shown to be “fix[ed]...with the security patch.”

21 For at least these reasons, Applicant respectfully submits that this claim is  
22 allowable.

23 **Claims 14-18** depend from claim 13 and are allowable as depending from  
24 an allowable base claim. These claims are also allowable for their own recited  
25

1 features which, in combination with those recited in claim 13, are neither disclosed  
2 nor suggested in the references of record, either singly or in combination with one  
3 another.

4 **Claim 20** recites method comprising (emphasis added):

5     • receiving a binary signature and a security patch from a  
6         distribution server;

7     • *searching on a client computer for a vulnerable file*  
8         associated with the binary signature; and

9     • if a vulnerable file is found, *fixing the vulnerable file with*  
10         *the security patch.*

11           In making out a rejection of this claim, the Office states that Donohue  
12 anticipates and uses reasoning similar to that discussed above in regards to claim  
13 1. Thus, for at least the reasons discussed above in regards to claim 1, Applicant  
14 respectfully submits that Donohue does not anticipate this claim. Namely,  
15 Donohue does not disclose “searching on a client computer for a vulnerable file”.  
16 Donohue has also not been shown to disclose “fixing the vulnerable file with the  
17 security patch.”

18           For at least these reasons, Applicant respectfully submits that this claim is  
19 allowable.

20           **Claims 21-22** depend from claim 20 and are allowable as depending from  
21 an allowable base claim. These claims are also allowable for their own recited  
22 features which, in combination with those recited in claim 20, are neither disclosed  
23 nor suggested in the references of record, either singly or in combination with one  
24 another.

1           **Claim 23** recites a computer comprising (emphasis added):

2           • means for receiving a binary signature;

3           • ***means for searching for a vulnerable file*** based on the  
4           binary signature;

5           • means for requesting a security patch if a vulnerable file is  
6           found; and

7           • ***means for fixing the vulnerable file with the security patch.***

8           In making out a rejection of this claim, the Office states that Donohue  
9           anticipates and uses reasoning similar to that discussed above in regards to claim  
10          1. Thus, for at least the reasons discussed above in regards to claim 1, Applicant  
11          respectfully submits that Donohue does not anticipate this claim. Namely,  
12          Donohue does not disclose “means for searching for a vulnerable file”. Donohue  
13          has also not been shown to disclose “means for fixing the vulnerable file with the  
14          security patch”.

15          For at least these reasons, Applicant respectfully submits that this claim is  
16          allowable.

17           **Claim 24** recites a server comprising (emphasis added):

18           • means for receiving a binary signature and a security patch  
19           from a distribution server;

20           • ***means for scanning a client computer for a vulnerable file***  
21           associated with the binary signature; and

22           • ***means for fixing the vulnerable file with the security patch***  
23           if a vulnerable file is found.

1           In making out a rejection of this claim, the Office states that Donohue  
2 anticipates and uses reasoning similar to that discussed above in regards to claim  
3 1. Thus, for at least the reasons discussed above in regards to claim 1, Applicant  
4 respectfully submits that Donohue does not anticipate this claim. Namely,  
5 Donohue does not disclose “means for scanning a client computer for a vulnerable  
6 file”. Donohue has also not been shown to disclose “means for fixing the  
7 vulnerable file with the security patch.”

8           For at least these reasons, Applicant respectfully submits that this claim is  
9 allowable.

10          **Claim 25** recites a computer having a tangible component and comprising  
11 (emphasis added):

- 12           • binary information;
- 13           • ***a scan module configured to receive a binary signature and***  
14 ***scan the binary information*** for the binary signature; and
- 15           • a patch module configured to request a security patch and  
16 install the security patch if the binary signature is found in the  
17 binary information.

18          In making out a rejection of this claim, the Office states that Donohue  
19 anticipates and uses reasoning similar to that discussed above in regards to claim  
20 1. Thus, for at least the reasons discussed above in regards to claim 1, Applicant  
21 respectfully submits that Donohue does not anticipate this claim. Namely,  
22 Donohue does not disclose “a scan module configured to receive a binary  
23 signature and scan the binary information”. Applicant notes that both the “binary  
24 information” and the “scan module” are recited to be a part of the computer.  
25 Applicant further notes that Donohue has not been shown to disclose a scan

1 module on a computer that is configured to scan information that is also part of the  
2 computer. At most, Donohue has been shown to describe an updater agent that  
3 searches software vendors' websites.

4 For at least these reasons, Applicant respectfully submits that this claim is  
5 allowable.

6 **Claims 26-27** depend from claim 25 and are allowable as depending from  
7 an allowable base claim. These claims are also allowable for their own recited  
8 features which, in combination with those recited in claim 25, are neither disclosed  
9 nor suggested in the references of record, either singly or in combination with one  
10 another.

11 **Claim 28** recites a computer having a tangible component and comprising  
12 (emphasis added):

- 13     • binary files;
- 14     • a binary signature; and
- 15     • ***a security patch module configured to receive the binary  
signature from a server and to scan the binary files in search  
of the binary signature.***

16     In making out a rejection of this claim, the Office states that Donohue  
17 anticipates and uses reasoning similar to that discussed above in regards to claim  
18 1. Thus, for at least the reasons discussed above in regards to claim 1, Applicant  
19 respectfully submits that Donohue does not anticipate this claim. Namely,  
20 Donohue does not disclose "a security patch module configured to receive the  
21 binary signature from a server and to scan the binary files in search of the binary  
22 signature". Applicant notes that both the "binary files" and the "security patch  
23  
24  
25

1 module” are recited to be a part of the computer. Applicant further notes that  
2 Donohue has not been shown to disclose a security patch module on a computer  
3 that is configured to scan files that are also part of the computer. At most,  
4 Donohue has been shown to describe an updater agent that searches software  
5 vendors’ websites.

6 For at least these reasons, Applicant respectfully submits that this  
7 claim is allowable.

8 **Claim 29** depends from claim 28 and is allowable as depending from an  
9 allowable base claim. This claim is also allowable for its own recited features  
10 which, in combination with those recited in claim 28, are neither disclosed nor  
11 suggested in the references of record, either singly or in combination with one  
12 another.

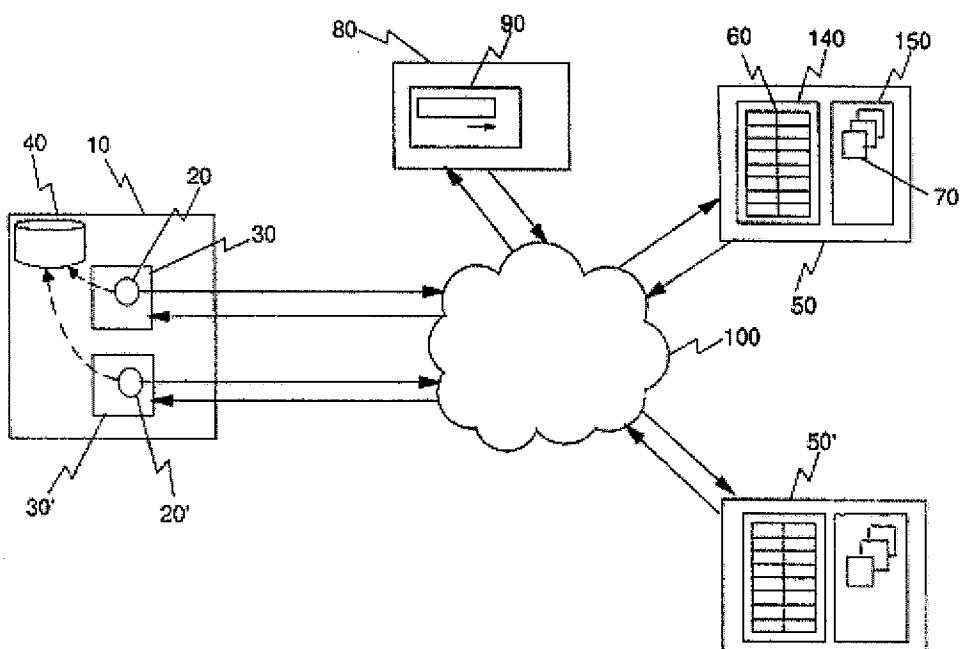
13 **Claim 30** recites a distribution server having a tangible component and  
14 comprising (emphasis added):

- 15 • ***a database; and***
- 16 • ***a distribution module*** configured to receive a binary  
17 signature and a security patch, store the binary signature and  
18 the security patch in the database, and distribute the binary  
signature and the security patch to a plurality of servers.

19 In making out a rejection of this claim, the Office states that Donohue  
20 anticipates all of the elements of the claim and cites to various portions of the  
21 reference. First, the Office cites to repository 40, shown in Donohue’s Figure 1, as  
22 disclosing Applicant’s “database”. The Office then cites to portions of Donohue  
23 discussed above in regards to claim 1 and other independent claims. These passages  
24 include column 8, lines 45-60, column 7, lines 60-62, column 5, lines 5-7, and  
25

1 column 7, lines 55-65. (*Office Action of 5/19/06*, p. 11). Applicant respectfully  
2 traverses the rejection.

3 Applicant respectfully submits that Donohue has not been shown to disclose  
4 Applicant's claim 30. More specifically, the Office fails to show a distribution  
5 server comprising *both* "a database; and a distribution module", as recited in  
6 Applicant's claim. (emphasis added). Instead, the Office cites to a user's  
7 conventional network-connected computer system 10 as containing Applicant's  
8 claimed "database", in the form of repository 40. The Office then appears to cite to  
9 remote server systems 50' as containing Applicant's claimed "distribution module".  
10 The computer system 10 and remote server system 50', however, *do not comprise a*  
11 *single "distribution server" as recited in Applicant's claim*. In fact, they could not  
12 be much further apart, emphasized by Donohue's characterization of server system  
13 50' as "remote". Donohue's Figure 1 depicts this deficiency, and is reproduced  
14 below:



25 FIG. 1

1 As shown above, Donohue does not disclose a “distribution server”  
2 comprising *both* a “database; *and* a distribution module”, as recited in Applicant’s  
3 claim. Instead, this portion of Donohue shows two wholly distinct components  
4 connected by a network 100, such as the Internet.

5 For at least this reason, Applicant respectfully submits that this claim is  
6 allowable. This claim is also allowable for at least all of the reasons discussed above  
7 in regards to claim 1.

8 **Claim 31** depends from claim 30 and is allowable as depending from an  
9 allowable base claim. This claim is also allowable for its own recited features  
10 which, in combination with those recited in claim 30, are neither disclosed nor  
11 suggested in the references of record, either singly or in combination with one  
12 another.

13 **Claim 32** recites a server having a tangible component and comprising:

- 14 • a binary signature associated with a security vulnerability in a  
15 binary file;
- 16 • a security patch configured to fix the security vulnerability in  
17 the binary file; and
- 18 • *a scan module configured to scan binary files on a client  
computer for the binary signature and to update the binary  
file with the security patch if the binary signature is found.*

20 In making out a rejection of this claim, the Office states that Donohue  
21 anticipates and uses reasoning similar to that discussed above in regards to claim  
22 1. Thus, for at least the reasons discussed above in regards to claim 1, Applicant  
23 respectfully submits that Donohue does not anticipate this claim. Namely,  
24 Donohue does not disclose “a scan module configured to scan binary files on a  
25

1 client computer for the binary signature and to update the binary file". Again,  
2 Donohue has not been shown to scan any files on a "client computer". Instead, the  
3 reference has at most been shown to search for software vendors' websites.

4 For at least these reasons, Applicant respectfully submits that this  
5 claim is allowable.

6 **Claim 33** depends from claim 32 and is allowable as depending from an  
7 allowable base claim. This claim is also allowable for its own recited features  
8 which, in combination with those recited in claim 32, are neither disclosed nor  
9 suggested in the references of record, either singly or in combination with one  
10 another.

11

12 **§103 Rejections**

13 Claim 19 stands rejected under 35 U.S.C. §103(a) as being unpatentable  
14 over Donohue in view of U.S. Patent No. 5,930,504 to Gabel. Applicant also  
15 respectfully traverses this rejection.

16 **Claim 19** ultimately depends from independent claim 13. As discussed  
17 above, Applicant submits that claim 13 is allowable. Furthermore, in the rejection  
18 of claim 19 Gabel has not been cited to remedy the deficiencies of the rejection of  
19 base claim 13. Thus, claim 19 is allowable as depending from an allowable base  
20 claim. This claim is also allowable for its own recited features which, in  
21 combination with those recited in claim 13, are neither disclosed nor suggested in  
22 the references of record, either singly or in combination with one another.

23

24

25

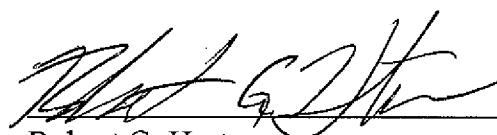
1            **Conclusion**

2            All of the claims are in condition for allowance. Accordingly, Applicant  
3            requests a Notice of Allowability be issued forthwith. If the Office's next  
4            anticipated action is to be anything other than issuance of a Notice of Allowability,  
5            Applicant respectfully requests a telephone call for the purpose of scheduling an  
6            interview.

7  
8            Respectfully submitted,

9  
10          Dated: 08/21/06

11          By:



12          Robert G. Hartman  
13          Reg. No. 58,970  
14          (509) 324-9256 ext 265